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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/647,492   | 08/25/2003  | Scott D. Raches      | P06038US0           | 2378             |
| 27139  | 7590        | 04/18/2005           | EXAMINER            |                  |
| MCKEE, VOORHEES & SEASE, P.L.C.<br>ATTN: MAYTAG<br>801 GRAND AVENUE, SUITE 3200<br>DES MOINES, IA 50309-2721 |             |                      | PERRIN, JOSEPH L    |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1746                |                  |

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/647,492

Applicant(s)

RACHES ET AL.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20030825 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20030825.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 7 recites the limitation "the first and second silverware baskets" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 6, 8-9, 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,069,360 to DINGLER *et al.* (hereinafter "DINGLER") in view of U.S. Patent No. 3,837,917 to JENKINS *et al.* or U.S. Patent No. 3,861,769 to JENKINS or U.S. Patent Publication No. 2003/0037809 to FAVARO or U.S. Patent No. 6,622,740 to DURAZZANI or DE 2960887. Re claim 1, DINGLER discloses a dishwasher (10) having a cabinet (12), a pivotal door (14), extendible/retractable racks (24) and a silverware basket (20) removably attachable to the door (see Figures 1-3 and relative associated text). Re claims 2, 9 & 16, since the basket disclosed by DINGLER has tapered openings (66) for attaching to the dishwasher door the position is taken that the door inherently must include a connecting means such as a hook or an equivalent thereof for securely attaching to the tapered opening of the basket. Re claims 6, 13 & 15, the dividers (50/64) create multiple compartments which read on multiple baskets positioned side-by-side on the door. Re claim 8, DINGLER further discloses the door being recessed in the basket connecting area (see Figure 1). Re claim 12, DINGLER further discloses an upwardly extending handle (64). DINGLER discloses using two removable racks but does not expressly disclose using three racks. However, JENKINS *et al.*, JENKINS, FAVARO, DURAZANI and DE 2960887 each disclose conventional three rack dishwashers. The position is taken that it would have been obvious for a person of ordinary skill in the art at the time the invention was made to use three racks versus two racks since duplicating the racks would advantageously increase the wash load. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Re

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applicant's claims to plural and separate baskets, as noted above, DINGLER discloses a silverware basket with multiple compartments that read on a plurality of baskets.

Although DINGLER discloses plural silverware compartments, DINGLER does not expressly disclose plural, separate baskets. The position is taken that it would have been obvious for a person of ordinary skill in the art at the time the invention was made to use two separate baskets which form separate compartments in place of one basket forming plural compartments since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, it would have been obvious to duplicate the number of baskets since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

6. Claims 3-5, 7 & 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over DINGLER in view of JENKINS *et al.* or JENKINS or FAVARO or DURAZZANI or DE 2960887 as applied to claims 1-2, 6, 8-9, 12-16 above, and further in view of U.S. Patent No. 5,431,294 to STOTTMANN *et al.* (hereinafter "STOTTMANN"). Recitation of the previous rejection is repeated here from above. However, the previous references do not expressly disclose a removable, pivotal cover attached to the basket.

STOTTMANN teaches that it is known to provide a silverware basket with a removable, pivotal cover (65) to form a washing chamber/compartments which "conveniently can be used to wash small light items" in the closed position and "conveniently may be sized to

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accept items like the blades of cooking knives" in the open or detached position (see entire reference of STOTTMANN, for instance, col. 4, lines 42-63). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to provide a silverware basket with a removable/pivotal cover for the purpose of advantageously washing a broad range of items of different sizes and shapes.

### ***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 5,330,102 to JARVIS *et al.*, which discloses a washing machine with recessed door and silverware basket; U.S. Patent No. 3,841,342 to CUSHING *et al.*, which discloses a three rack dishwasher.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph L. Perrin, Ph.D.  
Examiner  
Art Unit 1746

jlP